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ABSTRACT

This paper describes causes of special education conflict and explores alternative conflict management approaches being pioneered by state education agencies and school districts. The focus is on early informal dispute resolution strategies as alternatives to due process hearings and mediation. Problems with both due process hearings and mediation are identified, especially how late in the conflict process these mechanisms are engaged under the Individuals with Disabilities Education Act. Causes of conflict in special education are identified, including conflicts over design of special education services; conflicts over delivery of special education services; and relationship conflicts due to breakdowns in communication, trust, or cultural differences. Alternative strategies are grouped into: Stage 1--prevention strategies (participant and stakeholder training, a Stakeholders' Council, and collaborative rule making); Stage 2--disagreement strategies (parent-to-parent assistance, case managers, and telephone intermediaries); and Stage 3--conflict strategies (facilitation, mediation hybrid models, the prepared mediation conference, the ombudsperson, and third party opinion/consultation). Four appendices provide: (1) the regulatory provisions of mediation under IDEA '97; (2) a table comparing mediation and hearings; (3) a list of the advantages and limitations of early informal dispute resolution strategies; and (4) a chart giving examples of early dispute resolution strategies. (Contains 73 references.) (DB)

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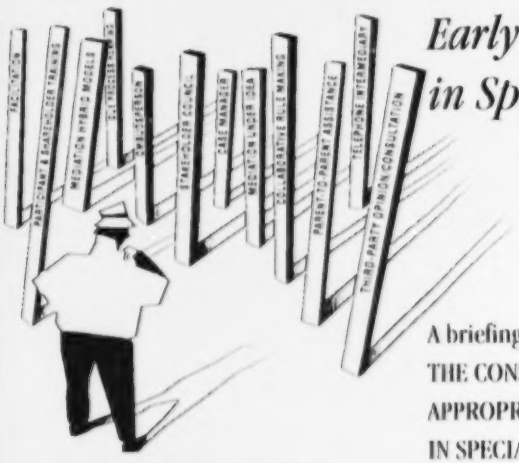
Beyond Mediation:

Strategies for Appropriate Early Dispute Resolution in Special Education



A briefing paper from
THE CONSORTIUM FOR
APPROPRIATE DISPUTE RESOLUTION
IN SPECIAL EDUCATION (CADRE)

Edward Feinberg, Ph.D.
Jonathan Beyer, J.D.
Philip Moses, M.A.

Forward by Judy Schrag, Ed.D.

OCTOBER 2002

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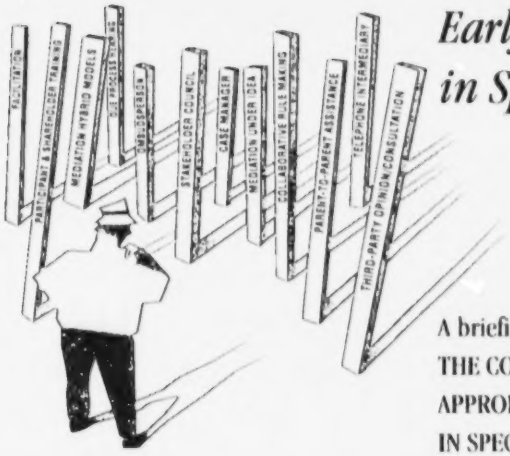

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* The affiliations listed for each individual may have changed since the research leading to this publication was conducted.

FORWARD

Dr. Judy A. Schrag

In 1975, the Education for All Handicapped Children Act, Public Law 94-142, was passed at a time when it was estimated that over a million children with disabilities across the country were not gaining access to the schoolhouse door. Physical access was therefore a major concern of Congress as it passed a procedural special education law that assumed that if specified processes were carried out, students with disabilities would receive a free public education that met their unique needs. Disagreements might also occur within the often complex process of planning and implementing special education programs and related services. This federal civil rights law called for the involvement of parents as a critical component of the educational planning process for children and included procedural safeguards to help schools and families resolve disagreements.

This reliance on formal dispute resolution has continued with the reauthorization and strengthening of the federal special education law in 1990 as the Individuals with Disabilities Education Act (IDEA) and with the 1997 Amendments of IDEA (IDEA '97). Over the years, however, there has been increasing concern regarding the predominant use of often adversarial due process procedures to resolve special education disputes. These procedures generally do not result in increased trust between parents and school personnel or the ability for these parties to resolve future issues of concern.

The authors of *Beyond Mediation: Strategies for Appropriate Early Dispute Resolution in Special Education*, Edward Feinberg, Jonathan Beyer, and Philip Moses, have done an excellent job of reviewing background information related to conflict resolution under IDEA. While it is significant that the 1997 Amendments of IDEA added mediation as a preferred mechanism for conflict resolution in special education, it was positioned at the point in the dispute when a due process hearing is being contemplated rather than earlier in the process when it could support the resolution of disputes in an informal, collegial manner. Thus, I agree with the authors that formal mediation is generally offered too late in the dispute resolution process.

As a result of this limitation, a rich array of alternative dispute resolution (ADR) strategies are being developed and implemented across the country that focus on earlier conflict resolution and that aim to strengthen relationships between parents and school personnel. A broad continuum of appropriate dispute resolution procedures have emerged that range from informal preventative processes to more formal hearing procedures. This finding was noted in the 1996 publication referenced in this document, in which the National Association of State Directors of Special Education (NASDSE) conducted a survey through its Project FORUM to identify the emergence of less formal conflict resolution approaches (Schrag, 1966). The authors of this briefing paper have updated this earlier work, identifying an increasingly diverse range of early conflict resolution strategies that are being used throughout the country within the conceptual model of a conflict management continuum.

It is exciting to see a nationwide shift away from the formal and often legalistic confrontation that is inherent in due process proceedings, to an emphasis on early resolution of special education conflicts, strengthened problem-solving skills, and the desire to build trust between school personnel and families. One can hope that Congress, in its next IDEA reauthorization, will "unhook" mediation from due process hearings by encouraging earlier mediation and a range of informal problem-solving and conflict resolution approaches and procedures.

As states explore establishing a continuum of options, decisions about system design can best be made when they are based on high-quality data. To that end, states are encouraged to implement integrated ADR data systems across complaints, mediation, due process, and other conflict resolution processes in order to evaluate whether, and under what circumstances, these various procedures are effective. The Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and its partner NASDSE are encouraging use of an integrated ADR database approach that can help gather the information needed to determine the most effective strategies for resolving dispute differences related to special education. Our focus must be on the implementation of research-based, effective programs and support for children and youth with disabilities, rather than on procedural minutia and inflexible positions. Processes that invite collaboration and informed partnerships hold the greatest promise for the development of quality education programs.

This publication identifies a number of effective early dispute resolution strategies already being used to resolve disagreements between families and schools about children's educational programs and support services. We all stand to benefit from the replication of those practices that optimize problem solving and program development while preserving the critical relationship between parents and providers.

INTRODUCTION

Deliberations concerning the design and delivery of special education services to children with special needs can be fraught with tension. All parties involved — educators, administrators, parents, advocates — may have strong feelings about the services that are needed, the ideas that are proposed, the locations for delivery of services, and the methods for implementing programs. While the Individualized Education Program (IEP) meeting can be a mechanism for reaching consensus on issues, it can also be a forum that highlights disagreements that may exist among participants.

The 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA '97) endorses mediation as a preferred means of resolving disputes that aren't resolved through the IEP process. While due process hearings are an appropriate remedy for some special education conflicts, mediation is viewed as a positive alternative to the often contentious hearing process.

In addition to the mediation systems mandated by IDEA '97, many states and school districts have piloted innovative strategies to prevent conflict from escalating and to manage conflicts as soon as they emerge. These early conflict resolution strategies address varying types of special education conflicts arising in states and school districts across the country. Just as the causes of conflict in special education are varied, so are the strategies for pursuing resolution.

This briefing paper describes some of the causes of special education conflict and then explores the range of conflict management approaches being pioneered by state education agencies and school districts. The focus of this paper and the underlying research is on innovative work that is being done related to disagreements regarding those children and youth (3 years and older) served under Part B of IDEA.

BACKGROUND: Conflict Resolution Under IDEA

The authors of the Education for All Handicapped Children Act (PL 94-142) and its successor, the Individuals with Disabilities Education Act (PL 105-17) or IDEA and its most recent version, IDEA '97, recognized that there would be disputes between parents and school personnel.[1] In anticipation of such disagreements, PL 94-142 and then IDEA '97 set forth procedures that emphasize administrative due process hearings and mediation as the mechanisms through which disputes between school districts and parents can be resolved. While these two procedures are noted in IDEA '97, the availability of a range of dispute resolution options within a state is noteworthy.

A. Due Process Hearings

Due process hearings are formal, quasi-judicial forums in which parties to a dispute (generally, school personnel and the family) present arguments and evidence to a hearing officer. The hearing officer makes a determination of facts and legal rights and responsibilities and renders a decision based on federal and state statutes and regulations as well as precedents established through other due process hearings or court decisions. Decisions may be based on substantive issues as well as procedural requirements, such as notification of rights within a specified number of days.[2] Parties who do not prevail in due process hearings may seek redress in the federal district and appellate courts. The United States Supreme Court, the final arbiter and interpreter of IDEA disputes, has rendered landmark opinions in such cases as Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982); School Comm. of Burlington v. Department of Ed. of Mass., 471 U.S. 359 (1985); and, Florence County School Dist. Four v. Shannon Carter, 510 U.S.7 (1993).

Legal precedents from the courts, regulatory interpretations from policy letters issued by the U.S. Department of Education's Office of Special Education Programs (OSEP), and the development of new interventions for persons with disabilities have significantly increased the complexity of arguments made in due process hearings. Attorneys who specialize in the area of "special education law" often represent parties in these proceedings, and they typically rely upon experts in special education to testify in support of their client's positions. Because of their technical and complex nature, due process hearings can, at times, become time consuming, expensive, and adversarial.

Stakeholders — parents, educators, administrators, and related service providers — acknowledge the problems associated with special education due process hearings. Parents report that the rigidity and adversarial nature of hearings can have a negative long-term impact on the relationship between families and school personnel.[3] Parent advocates contend that due process hearings favor school districts because participation often requires technical expertise and substantial resources to engage a complex process that can easily exceed $40,000 per hearing.[4] School districts, on the other hand, contend that given the inadequate

[1] See Engel, D. (1991, February). Law, culture, and children with disabilities: Educational rights and the construction of differences. *Duke Law Journal, 1991* (1), 166-205.

[2] Feinberg, E., & Beyer, J. (1998). Creating public policy in a climate of clinical indeterminacy: Lovaas as the case example du jour. *Infants and Young Children*, 10(3) 54-66.

[3] Gittler, J., & Hurth, J. (1998). Conflict management in early intervention: Problem-solving negotiation. *Infants and Young Children*, 11(1) 28-36; Beekman, L. (1999). The King Solomon approach: Mediating special education disputes. In *The Twentieth National Institute on Legal Issues in Educating Individuals with Disabilities*. Alexandria, VA: LRP Publications.

[4] Statement of the Council of Parent Attorneys and Advocates on the report of the National Council on Disability "Back to School on Civil Rights." 2000, December 16 FEAT; Opuda, M. A. (1999). *Comparison of parents who initiated due process hearings and complaints in Maine*. Unpublished doctoral dissertation, Virginia Polytechnic Institute and State University, Blacksburg.

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federal funding for IDEA, outcomes of due process hearings and court decisions can have far-reaching effects on the scope and cost of services that local education agencies are compelled to provide.[5] Even those who prevail in due process hearings conclude that the process is unfair and exhausting.[6]

The tremendous financial, temporal and emotional costs of due process hearings have inspired parents, advocates, and educators to seek alternative methods for resolving special education disputes.

B. Mediation

By the 1990s, a variety of dispute resolution procedures were being implemented to address the problems associated with due process hearings, with mediation emerging as the process most frequently recommended.[7] Many states had begun to offer some form of mediation by 1990; by 1994, 39 of the 50 states had adopted special education mediation systems.[8] The only mention of mediation in federal regulations prior to IDEA '97, however, was found in a 1992 note concerning impartial due process hearings:

> Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and the provision of FAPE to those children. Mediations have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under §§ 300.500-300.515.[9]

Mediation has been a required component of the dispute resolution process since the reauthorization of IDEA in 1997, when for the first time, the Congress explicitly identified mediation as a preferred mechanism for conflict resolution in special education:

> The committee is aware that, in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the committee's strong preference that mediation becomes the norm for resolving disputes under IDEA. The committee believes that the availability of mediation will ensure that far fewer conflicts will proceed to the next procedural steps, formal due process and litigation, outcomes that the committee believes should be avoided when possible.[10]

[5] Collins, L., & Zirkel, P. (1992). To what extent, if any, may cost be a factor in special education cases? *Education Law Report*, 71, 11.

[6] Kurtiloff, P. (1995). Is justice being served by due process?: Affecting the outcome of special education hearings in Pennsylvania. *Law and Contemporary Problems*, 48(1), 89-118.

[7] Ahearn, E. (1994). *Mediation and due process procedures in special education: An analysis of state policies*. Alexandria, VA: National Association of State Directors of Special Education.

[8] Ibid.

[9] 34 C.F.R. §300.506, cmt (September 29, 1992).

[10] S. Rep. No. 105-17 at 26 (1997).

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Gittler and Hurth explain that the "legislative history of IDEA '97 manifests a clear congressional intent that mediation become the primary, albeit not the exclusive, process for resolving disputes arising under IDEA."[11] (A complete listing of the Federal regulations concerning mediation under IDEA is provided in Appendix A.)

Mediators, although often employing different styles of mediation,[12] generally agree that mediation:[13]

- Affords the participants a structured opportunity to meet and discuss their concerns and to work collaboratively to create a mutually satisfactory agreement
- Empowers the participants to explore issues, make decisions, and design solutions
- Offers a voluntary process for mutual problem solving without assigning blame or determining fault
- Provides a confidential process to all participants
- Emphasizes communication and creative problem solving by providing a mediator to assist the participants in defining their problems, exploring their interests, and resolving their conflicts together
- Focuses on the future by describing what future interactions, plans, agreements, or behavior changes will occur.

Parents, advocates, and school district personnel have generally been pleased with the development of state mediation systems. Reports from some states relate high rates of success in the resolution of disputes,[14] significant cost savings from averted hearings,[15] and anecdotal evidence of improved relationships between parents and school district representatives as a result of the discussions in mediation.[16] Schrag and Schrag's study of ten states in 1998 and 1999 revealed that three states had more mediations per year than due process hearings and two states had an almost equal number of hearings and mediations.[17] Thus, in many states a clear trend is emerging of parents and school districts using mediation as a preferred alternative to due process hearings for resolving special education disputes.

While many observers of mediation recognize its benefits over due process hearings, some are advocating for changes in the requirements for mediation established by IDEA '97. They identify several concerns:

Mediation under IDEA is generally offered too late in the dispute resolution process. Some states only offer parents mediation after the parents have requested a due process hearing. Because considerable time can pass between the emergence of a disagreement and the filing of a

[11] Gittler, J., & Hurth, J. (1998) Conflict management in early intervention: Procedural safeguards and mediation. *Infants and Young Children* (11)1 15-27.

[12] See, for example, Zumeta, Z. (2000). Styles of mediation: Facilitative, evaluative and transformative mediation. http://mediate.com/articles/zumeta.cfm; see also Kauffman, N., & Davis, B. (1998, May). What type of mediation do you need? *Dispute Resolution Journal*, 53 (2) 8-14.

[13] Engiles, A., Baxter Quash-Mah, S., Peter, M., & Todis, B. (1995). *Utilization of dispute resolution for special education disagreements*. Unpublished paper, Eugene, Oregon.

[14] See, for example, Benson, J.T. (2000, October). State Superintendent of Wisconsin Department of Public Instruction. *Report on the Wisconsin special education mediation system*; Wright, G. (2000, August 23). Nebraska Office of Dispute Resolution, Year in review meeting.

[15] See, for example, Neustadt, S. (2000). Concept paper: Alternative dispute resolution. Eugene, OR: CADRE.
See also, Report from the Michigan Special Education Mediation Program, FY 99-00.

[16] Schumack, S., & Stewart, A. (1998). When parents and educators do not agree: Using mediation to resolve conflicts about special education. Center for Law and Education, Boston, MA.
See also, Creasey, M.S. *The effects of mediation on working relationships between families of students with disabilities and school personnel in dispute*. Doctoral dissertation in progress, College of William and Mary, Williamsburg, VA.

[17] Schrag, J., & Schrag, H. (1999). Status of annual dispute resolution effectiveness and impact measurement. National Association of State Directors of Special Education. http://www.directionservice.org/cadre/nasdse.cfm

request for a due process hearing, serious breakdowns in communication often occur between district representatives and families. Parents and educators can become hardened in their positions, making a successful mediation outcome far more difficult to achieve. Furthermore, if mediation occurs only after a request for a due process hearing has been filed, the process may be perceived as merely a prelude to litigation. As a result, participants may feel caught in a bind: they are expected to negotiate in a collaborative fashion during mediation while knowing that an unsuccessful mediation may possibly lead to an adversarial due process hearing.

Mediation agreements are sometimes difficult to implement because of a lack of IDEA requirements. While some states and districts implement mediation agreements by requiring them to be incorporated into the Individual Education Program (IEP), the implementation of mediated agreements remains a challenging and often frustrating aspect of the process, particularly for parents.[18]

Qualifications and training requirements for mediators are unclear. The IDEA regulations only specify that mediators be trained in special education law and mediation techniques. Because states vary considerably in the standards they require of mediators,[19] some mediators are superbly qualified while others may have limited knowledge of special education law and be minimally trained in mediation techniques.

The presence of attorneys in mediation may complicate the process and outcome of deliberations. Discussion abounds regarding the potential benefits and pitfalls of having attorneys present in mediation. Proponents of an active role for attorneys and advocates in special education mediation present two central arguments to support their position. First, they assert that attorneys and advocates can overcome the inherent power imbalances between school district personnel and parents in special education mediation. Second, they contend that attorneys and advocates are important stakeholders in resolving special education disputes, providing a valuable point of view, and often facilitating settlement.

Proponents of excluding attorneys and advocates from special education mediation also offer two key arguments. First, they insist that attorneys and advocates can undermine the collaborative process of mediation by approaching it from an adversarial perspective. Second, they assert that attorneys and advocates are not necessary to overcome the power imbalances inherent between school district personnel and parents.[20]

Veteran mediator Art Stewart directly compares special education mediation and due process hearings in the table found in Appendix B.

C. Dispute Resolution Options

Both proponents and critics of mediation recognize that mediation is an important element in a range of dispute resolution options and that a variety of dispute resolution mechanisms operate at state and local levels throughout the United States. Some are pilot projects offering limited outcome data while others are tested programs

[18] Opuda, M. (1999). *A comparison of parents who initiated due process hearings and complaints in Maine.* Unpublished doctoral dissertation, Virginia Polytechnic Institute and State University, Blacksburg, 108.

[19] Beyer, J. (1997, Winter). Practicing law at the margins: Surveying ethics rules for legal assistants and lawyers who mediate. *The Georgetown Journal of Legal Ethics,* 11(2), 411-470.

[20] Feinberg, E., & Beyer, J. (2000, July). *The role of attorneys in special education mediation.* Briefing paper for the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), Eugene, OR.

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featuring promising practices. So far, no compendium of information on the range of conflict resolution options has been available to school districts and advocacy organizations seeking to expand their own strategies.

Studies of these dispute resolution strategies do not generally appear in the journals or other conventional publications dedicated to special education. A notable exception to the gap in the literature was a publication on special education mediation, which described various dispute resolution options utilized by states at that time.[21] However, there has been no comparable study of the many experimental strategies and pilot programs that have been developed by states and districts in the five years since then.

The authors of this guide have discovered that many special education conflicts are being resolved prior to engaging the dispute resolution mechanisms of due process hearings and mediation provided under IDEA. While these IDEA mechanisms play valuable roles in the resolution of special education disputes, states and districts have experimented with alternative methods of conflict management designed to resolve disputes early in their evolution. These strategies for early conflict resolution have emerged on the frontline between parents and districts in response to particular kinds of special education conflicts, and they have clear advantages over the IDEA mechanisms, as well as limitations. (See Appendix C)

To determine the appropriate use for these early strategies of dispute resolution, it is helpful to understand the character of the conflicts that are inspiring such innovations.

Causes of Conflict in Special Education

Conflicts arise between stakeholders in special education for a variety of reasons. No national reporting system exists to identify and quantify the various causes of special education disputes, but an increase in due process hearings from 4,079 in 1991 to 9,827 in 1998 suggests that conflicts in special education have increased nationwide.[22] Although several states collect data on their special education disputes, cross-state comparisons prove difficult because states use different categories and definitions of conflict. Nevertheless, on the basis of the data kept by states as well as the views of state mediation coordinators and other observers of special education mediation, these conflicts can be grouped into one of three general categories: design, delivery, and relationships. To be sure, most special education disputes have elements of all three areas of conflict.

A. Design

Design conflicts arise when stakeholders have differing understandings or ideas about special education services. These debates typically concern eligibility for services; methodology of intervention; perceptions about student needs; the scope of the IDEA entitlement; and educational placement.

Determination of eligibility for special education and the services needed to implement IEP goals and objectives is probably the most common source of conflict between parents and school district representatives. Susan Sellars, Mediation Coordinator of the Texas Education Agency, reports that 80% of the 530 mediation requests in 2000 were

[21] Project FORUM, National Association of State Directors of Special Education. (1996, August). *Mediation and other alternative dispute resolution procedures in special education* (Final Report Year 4). Arlington, VA: Judy Schrag.

[22] Ahearn, E. (1999, July). Due Process Hearing Update [Electronic version]. *NASDSE's Quick Turnaround Forum.*

for IEP and program-related issues, placements, or assessments.[23] A January 2001 study from the Michigan Special Education Mediation Program also notes that mediators reported that differences among school districts and parents in perceptions of student need, on the one hand, and adequacy of the school services, on the other, were two of the top four reasons that mediations had been conducted in the previous year.[24] Mediation coordinators in Kansas, New Mexico, New Jersey, Washington, Illinois, Nebraska, and California reported similar analyses.[25]

Parents may contend that their child has needs that warrant special education services while the school team may conclude that the child is ineligible for these services and/or that the educational needs of the child can be met through the general curriculum. Or, parents may come to an IEP meeting with an independent assessment identifying a preferred methodology. These reports may recommend intensive and specialized services based on a medical or developmental diagnosis. School teams are then confronted with the challenge of integrating the medical diagnostic information and recommendations within their existing educational framework and defining the scope of services that are covered by the special education entitlements in state and federal law.

In other cases, the school team may contend that a child has needs that warrant special education services but the parents may conclude that the needs of the child can be met without the services. A 1998 article indicated that the proportion of children in school districts around the country considered eligible for special education varied widely, ranging from 4% to 21%. Sack writes, "Some parents want to avoid what they see as the stigma of special education and refuse the designation for their children even though they may badly need it. Other parents are willing — even eager — to accept the label."[26]

Once a child is determined eligible for special education services, disputes may arise over the most appropriate methodology for intervention. In the last few decades, a range of interventions has emerged that offer the possibility of extraordinary outcomes. However, some of these therapies tend to be expensive and require highly specialized personnel. The intensive applied behavior analysis methodology of Dr. Ivar Lovaas, for example, was the major cause of disputes between parents of young children and early intervention systems and school districts during the 1990s.[27] Parents and districts have also argued over such specialized reading methodologies as Orton-Gillingham, sensory integration and conductive education.

Parents and districts may perceive the needs of the student differently because they are using different information to determine eligibility and appropriate methodology. With the rapid availability of information through the Internet, parents are now more aware than ever of scientific advances in therapies for children with disabilities. Specialized websites serve as a valuable source of information for parents, enabling them to learn quickly about important issues related to obtaining special services for their children. Prior to the Internet age, this information was difficult to access and was generally only available to specialists who subscribed to expensive publications.[28]

[23] S. Sellers (personal communication, February 12, 2001).

[24] T. Verdonk (personal communication, January 4, 2001).

[25] Personal communications from state dispute resolution coordinators.

[26] Sack, J. L. (1998, June 24). Special education designation varies widely across the country. *Education Week*, 20.

[27] Gittler, J., & Hurth, J. (2000, November 30). *Conflict resolution and early intervention.* Presentation at CADRE National Symposium on Dispute Resolution in Special Education, Washington, D.C.; Mandlawitz, M. (1999). *Analyses of special education hearings 1995-1999.* Alexandria, VA: National Association of State Directors of Special Education.

[28] See, for example, the *Individuals with Disabilities in Education Law Report.*

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Parents and districts may also perceive the entitlements of the student differently. Vermont attorney and mediator Brice Palmer writes, "Breakdown of communication between parents and school district personnel is caused, in the majority of instances, by parents not being adequately informed as to what limits are contained in IDEA and local school district personnel not being adequately informed about the extent and complexities of the administrative requirements contained in the federal statutes and regulations. Because of this, conflict arises due to both sides having a different understanding of what is and what is not required." [29]

Disagreements also often arise over who is financially responsible for providing expensive services that may be medically related. As a result of managed care and other changes in health care funding, parents who were once able to successfully seek coverage from medical insurance for specialized or supplemental therapies are now seeking these services from school systems. The problem of shrinking health care resources is exacerbated by an expanding definition of health services that are considered to be within the province of the IDEA entitlement, as well as a tremendous growth in the number of children with special health care needs who require expensive nursing and specialized therapies.

The goal of providing appropriate educational services to children with special educational needs in the least restrictive environment is an additional source of disputes for parents and school districts. School districts are struggling with the challenge of implementing individualized educational programs in the face of increased special education costs and reduced staff. Local special education administrators have also sought clarification on the obligations of school systems vis-à-vis students who demonstrate disruptive behaviors through violence and aggression.

B. Delivery

The second most frequently cited area of disagreement is the delivery of services. Delivery problems are those associated with implementing an IEP that has been agreed upon by the family and the school district. Although the stakeholders may have reached agreement both on the needs of a child and on the services that child should receive, conflict may arise if either the school district fails to provide the agreed upon services or the parents feel that services are not being appropriately provided. Delivery conflicts often involve issues of provider competence, scheduling, transportation, coordination of services, procedural requirements, privacy, and/or confidentiality.

These conflicts frequently include parental contentions that the district failed to implement agreed upon services and/or violated procedural safeguards. Personnel shortages have created serious problems in this regard for many school districts. In Illinois, mediators Sherry Colgrove and David Terry note that the failure to provide services as required by the IEP is one of the primary reasons for parent complaints.[30] According to a survey of parents in Minnesota participating in special education mediation, administered from 1993 to 1999, only 26% of the factors leading to dispute arose from inadequate school services. By 2000, however, the percentage of Minnesota parents who cited the failure of school districts to deliver special education services as the source of their disputes had increased to 46%.[31]

[29] B. Palmer (personal communication, February 1, 2001).

[30] S. Colgrove (personal communication, March 12, 2001).

[31] B. Blackstone (personal communication, January 2, 2001).

The delivery of services specified in IEPs was also the predominant issue of concern identified by parents bringing formal complaints in New Mexico. Complaints concerning the delivery of services occurred in almost three times as many cases as did any other identified issue of concern.[32]

Similarly, in Nebraska delivery problems related to placement and program service coordination were identified in 40% of the special education mediations for 1999.[33]

C. Relationships

Relationships are perhaps the most important but elusive source of disputes between school districts and parents. Relationship conflicts may stem from loss of trust, breakdowns in communication, and cultural differences. Although only a handful of states include this category in their analysis of requests for mediation, mediators and mediation program coordinators consider relationship conflicts to be a central reason that increasing numbers of parents seek mediation.

Disagreements over substantive issues among parents and members of school teams frequently devolve into interpersonal antagonism. By the time mediation takes place under IDEA, the details of the dispute may have become less important than the animosity between the parties. At this point the parents may accuse the school personnel of not acting in good faith, trying to deny their child an appropriate education, not individualizing the child's program, and only wanting parents to passively comply with what appear to be predetermined recommendations primarily motivated by cost-containment. Conversely, the school district personnel may contend that the parents are making extravagant requests, misunderstanding the intent of IDEA, and simply looking for cures or panaceas — that they have not accepted the magnitude of their child's disability and are attempting to embarrass the school district by focusing on minute procedural violations. These perceptions can lead to considerable tension when parties come to mediation under IDEA.

The few states that quantify interpersonal conflict and communication breakdown as causes of disputes rank them as one of the primary reasons for due process hearings or mediation. Relationship issues ranked second of ten causes of conflict identified in a 1999 analysis prepared by Sound Options, the organization providing special education mediation services for the state of Washington.[34] In Nebraska, the issues of communication, relationships, and trust were ranked fourth, fifth and sixth, respectively, in a list of 20 reasons for disputes during the period from 1997 to 2000.[35] Mediators in Minnesota reported that communication breakdowns and distrust were second only to differences in perceptions of student needs as factors leading to disputes in fiscal year 2000.[36]

Mediation coordinators who do not compile statistics on relationship issues nonetheless recognize that lack of trust and communication breakdowns are significant factors in special education disputes. The coordinator of

[32] R. Pasternack (personal communication, January 28, 2001).

[33] Nebraska Department of Education, Special Populations Office. (2000). *Nebraska special education mediation option annual report - 2000*. Lincoln, NE.

[34] Sound Options. (1999). *Special education mediation. Parents and school systems working together*. Annual report, Bainbridge Island, Washington, 1998-1999.

[35] Nebraska Department of Education, Special Populations Office. (2000). *Nebraska Special Education Mediation Option Annual Report - 2000*. Lincoln, NE.

[36] Minnesota Office of Dispute Resolution (personal communication, August 10, 2000).

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dispute resolution for the Office of Special Education Programs in Trenton, New Jersey, writes, "We know that the majority of the disputes are the result of a failure in communication between districts and parents." [37]

Observers of the mediation process share this perspective. Illinois special education mediators Terry David and Sherry Colegrove write, "By the time parties reach mediation, trust is gone." Noting that he has mediated almost one thousand special education disputes, Terry David explains, "The communication breakdown occurred much earlier." [38] Johnny Welton, director of a special education district in California echoes these themes when he writes, "Distrust often becomes the issue." [39] Marshall Peter, Director of the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), observes that parents and educators alike frequently report that having been ignored or treated with disrespect is an important aspect of their disagreement. Michael Opuda concludes from his examination of disputes between parents and school districts in Maine:

> Relationships are more important than compliance in preventing requests for due process hearings and complaints. While parents cited regulatory compliance and the provision of special education as contributing to their decision to initiate a hearing or a complaint, improved parent and school relationships (collaboration and honesty) were cited more frequently as means of reducing the need for parents to initiate due process. A school's failure or a parent's perception of a failure in a compliance area may be the catalyst that triggers a parent who already has a poor relationship with the school to initiate due process.[40]

Whether caused by issues related to design, delivery, or relationships, special education disputes require methods of resolution that address the unique character of the conflict early in the life of the dispute. States and districts are experimenting with different approaches to resolving the various types of special education conflicts early, before they require intervention through mediation under IDEA or a due process hearing. These innovations are as diverse as the communities from which they originate; they reflect the flexibility and originality that occurs on the frontline of special education conflict resolution. A summary of these strategies can be found in Appendix D.

[37] D. Moyer (personal communication, July 21, 2000).

[38] S. Colegrove & T. David (personal communication, February 8, 2001).

[39] J. Welton (personal communication, January 22, 2001).

[40] Opuda, M. (1999). *A comparison of parents who initiated due process hearings and complaints in Maine.* Unpublished doctoral dissertation, Virginia Polytechnic Institute and State University, Blacksburg, 104.

Innovations for the Early Resolution of Special Education Disputes

Several states and districts have developed early dispute resolution strategies that, along with due process hearings and mediation under IDEA, may be placed on a conflict management continuum. This continuum is a conceptual model that allows placement of the various strategies according to the stage of development of the conflict at which they are implemented and the degree of intervention they require (see Table 1). On this continuum, the earliest stage of conflict management is prevention. This stage begins when stakeholders who have shared interests gather to influence the special education system, or when training is provided that increases the capacity of stakeholders to resolve differences without direct third-party assistance. After this first stage, conflicts may be resolved through the assistance of various third-party entities, or, if needed, eventually through legislative action. It is important to understand that while the continuum appears to be linear and generally progressive, there is no set pattern of use. For example, a conflict may be initially introduced through the invocation of a procedural safeguard (Stage IV) and subsequently resolved through a telephone intermediary (Stage II). Also, there is considerable fluidity among the various stages of conflict as well as among the dispute resolution strategies themselves.

TABLE 1. Continuum of Conflict Resolution Options

Stages of conflict	Stage I	Stage II	Stage III	Stage IV	Stage V
Levels of intervention	Prevention	Disagreement	Conflict	Procedural Safeguards	Legal Review
Assistance/ Intervention Options	Participant & Stakeholder Training; Stakeholder Council; Collaborative Rule Making	Parent-to-Parent Assistance; Case Manager; Telephone Intermediary	Facilitation; Mediation Hybrid Models; Ombudsperson; Third-Party Opinion/Consultation	Mediation Under IDEA; Complaints; Due Process Hearing	Hearing Review (Tier II); Litigation; Legislation
Dimensions that help clarify placement of the options along the continuum	Third-Party Assistance ——— Third-Party Intervention				
	Decision Making by Parties ——— Decision Making by Third Party				
	Interest based Based on mutually acceptable solutions ——— Rights based Based on legally defined rights				
	Informal & Flexible ——— Formal & Fixed				

Prevention strategies address special education conflicts before they occur or when they are still in their embryonic stages. Schools and families may be aware of the potential for a dispute to arise, such as from different perspectives about a new intervention methodology for children with autism, but they are not yet presented with an actual conflict. Strategies at the prevention stage are characterized by communication and negotiation skills acquisition for individual stakeholders, enhanced communication between stakeholders, and the development of consensus building opportunities for stakeholders in the system. Conflict resolution options

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at this stage focus on preventing disputes from developing as well as improving strained relationships among individuals who have experienced conflict in the past.

Disagreement strategies mark the stage when the parties first begin to identify a specific difference of opinion or experience a misunderstanding. Although the disagreement may be minimal, this stage is significant because it marks the first time that one of the parties seeks outside assistance. At this stage, families and schools often utilize informal methods of dispute resolution that do not rely on significant intervention from a neutral third party.

Conflict strategies are used when informal attempts to resolve the disagreement have failed and the dispute has become more defined and protracted. At this stage, the conflict itself may be easily identified, but the source or basis of the dispute may be difficult to identify and resolve. A neutral third party may take an active role in attempting to resolve the conflict either by using facilitative strategies or by employing more direct intervention such as offering evaluations, recommendations, and guidance.

When a dispute is not resolved using early and informal methods of conflict resolution, it typically requires the more formal procedures of mediation and/or a due process hearing as prescribed by IDEA. While not covered in this publication, litigation, including appeals, is the final legal recourse for resolution of conflicts. Stakeholders may also pursue legislation or administrative rule making to create statutory or regulatory mandates and prohibitions.

A. Stage I: Prevention Strategies

Prevention strategies attempt to minimize conflict by increasing the capacity of systems and individuals to meaningfully collaborate and problem solve. Prevention strategies may be especially useful when families and school personnel identify chronic distrust, a climate of conflict, and polarization among stakeholders. Some examples of prevention strategies include participant and stakeholder training, a stakeholders' council, and collaborative rule making.

1. Participant and Stakeholder Training

Some states and localities have made a commitment to equipping parents, educators, and service providers with skills that enhance the ability to negotiate and prevent conflict from evolving and becoming problematic.

Greg Abell, Director of Sound Options Mediation and Training Group, the private nonprofit organization that coordinates IDEA mediations in the State of Washington, provides several multi-day courses for parents, special educators, and regular educators in his state in an effort to "..enhance their abilities to successfully resolve future conflicts." Topics include collaborative decision making, negotiation, mediation, multi-party dispute resolution, large group facilitation, and cultural diversity. Over 900 people have attended the courses in a five-year period. Abell cites four main obstacles to effective collaboration:[41]

1. Mutual gain is a new concept for many people. Most of us live and work in situations in which hierarchy, win-lose, and power or rights are the basis for problem solving, decision-making and conflict resolution.

[41] G. Abell (personal communication, December 2, 2000).

2. Individuals lack skills for functioning collaboratively.
3. Individuals and organizations fail to model collaboration.
4. Systems are resistant to change.

Sue Tate, the ADR System Director for the Administrative Office of the Courts in Oklahoma, has undertaken a similar approach by instituting the Early Settlement Mediation project for dealing with special education disputes. This project provides training in mediation to all sectors of the special education community — parents, parent groups, school personnel, advocates, and state education agency officials. She writes, "Our goal in putting all these folks through mediation training was to make them knowledgeable of the facilitative model of mediation we use and to create friendly, informed participants for future mediation sessions. The training strategy worked in that people are more likely to seek mediation as a first reaction to IDEA disputes and to reserve due process for use as a last resort." [41]

The strategy of stakeholders' training involves identifying organizations and individuals who are critical to developing consensus within the educational community and then training them in conflict prevention and resolution methods. The group integral to the success of this prevention approach generally includes educational policy makers, administrators, key front line staff, parent advocates, and service providers who shape opinion or who are involved in any aspect of educational conflict.

When Larry Streeter, Dispute Resolution Specialist for the Idaho Department of Education, assumed his position in 1998, he observed that the Idaho Department of Education and the state's school districts rarely met with the state's two main advocacy organizations, Idaho Parents Unlimited and Comprehensive Advocacy, Inc. unless it was in an adversarial situation. In an effort to improve working relations, he brought the principal representatives of these entities together for a 40-hour training in interest-based negotiation by mediation expert Stacey Holloway. The content of the course as well as the opportunity to share perspectives transformed the frosty climate that had existed between the educational establishment and the advocacy community. The special education stakeholders in Idaho now interact and collaborate frequently.

Dispute resolution consultant Karen Hannan has taken an organizational perspective in working with stakeholders in Portland, Oregon. In trying to reduce conflict and improve collaboration, she interviewed more than 80 parents and staff members at all tiers of the school system and in a variety of schools. She determined that there were myriad conflicts reflecting tension between special educators and regular educators, differing interpretations of the meaning of "free and appropriate public education," and stressful transitions from early intervention programs to elementary school, elementary school to middle school, and middle school to high school. She also learned that there were disputes regarding the kinds of services available to children, the quality of those services, the complex requirements for disciplining children with disabilities, and issues of eligibility for special education.

Her assistance focused on both content and process. In the content arena, she worked with stakeholders to determine how to improve the organization of the school system and how to ensure that school teams have sufficient information and resources to make reasonable decisions regarding special education services. In the process arena, she designed guidelines for conflict management in special education and then provided

[41] S. Tate (personal communication, March 6, 2001).

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training to staff and parents in pilot schools. The guidelines include information on understanding conflict, managing conflict in meetings, active listening, interest-based problem solving, meeting closing strategies, and post-meeting considerations. She also provided meeting checklist points, agenda-planning questions, and questions to uncover interests. Hannan reports, "People were thrilled and delighted with their training, felt they had really improved their skills, and in some cases mentioned they had been confronted with the realization that they didn't really begin with such great skills after all." [43]

DeeAnn Wilson, dispute resolution coordinator for her state's department of education, reports that "Iowa is very committed to not only making certain there are well known formal processes people can use to resolve differences, we are also giving them skills to work with people when there are differences." For example, each of the 15 area education agencies (AEAs) offers a 1-to-2 day workshop called *"Creating Solutions: Skills to Effectively Resolve Differences Between Parents and Educators,"* a training program provided by the Iowa Peace Institute and funded by the Iowa Department of Education.

In addition, the Iowa Department of Education funds a four-day training session for AEAs on introductory mediation, and a two-part, six-day advanced mediation training. Some of the AEAs are now requesting specialized training to review or enhance skills that are individualized for their own AEAs. Numerous AEAs, sometimes involving not only AEA personnel, but also parents, community agencies, and districts, are taking advantage of these programs. The in-service training is offered at 18 sites across the state over several months and Iowa now has over 500 people who have completed at least four days of mediation training. Although the training is designed to help Resolution Facilitators, the Iowa Department of Education is aware that few will actually be acting as Resolution Facilitators. However, they believe the skills will help all parties when differences occur.[44]

Judy Douglas from the Office of Due Process and Complaints in Virginia's Department of Education, reports that Virginia also conducts statewide training similar to what is described for Oklahoma. Virginia's training and dissemination of information includes a multimedia package and regional trainings offered across the state. Additionally, their State Improvement Plan and self-assessment identifies the need for additional training on mediation.[45]

Pam Goins, Program Consultant with the Kentucky Department of Education, indicated that her state is beginning stakeholder training in the mediation process. They are providing two six-hour institutes for parents, teachers, and school administrators at their annual state exceptional children conference. They are also providing sponsorships to parents so that they can afford to attend. The training institutes include conflict resolution skills, communication techniques, a live mock mediation, and information to parties on obtaining mediation services. They are also presenting five regional activities very similar to the statewide training to promote the availability of Kentucky's educational mediators and the effective use of conflict resolution.[46]

[43] K. Hannan (personal communication, October 12, 2000).

[44] D. Wilson (personal communication, October 17, 2001).

[45] J. Douglas (personal communication, October 16, 2001).

[46] P. Goins (personal communication, October 18, 2001).

Under a subcontract with the Oregon Department of Education, Rod Windle and Suzanne Warren of the Hood River School District near Portland have developed a manual that is designed as an educational tool for understanding and resolving conflict. It applies dispute resolution concepts to special education situations. Written in an easy-to-understand, illustrated, and jargon-free format, it is designed both for stand-alone reading and for use in workshops.[47] Titled *"Collaborative Problem Solving and Dispute Resolution in Special Education,"* it can be found on the CADRE website at www.directionservice.org/cadre/contents.cfm.

In a study examining multiple aspects of dispute resolution efforts in Oregon, Martha Morvant and Richard Zeller report that most districts preferred using informal approaches in dealing with conflicts as soon as significant disagreements emerged between parents and district personnel.[48] According to interviews with district representatives, it was important to use central office staff in a mediating role and to cultivate relationships. Training for staff and parents seemed effective in several school districts, with one staff person quoted as saying, "We are choosing to address the basic reasons of why students and parents may become confrontational or difficult to reason with. If our staff has the information and the philosophy, we will not need outside resources."

2. Stakeholders' Council

A handful of states including Wisconsin, California, and Iowa view Stage I problems as an opportunity to bring stakeholders together to move beyond a history of suspicion and create a culture and systems that emphasize effective conflict management strategies.

The Stakeholders' Council in Wisconsin is a successful example of a strategy designed to transform a culture of conflict into a culture of collaboration. When Eva Soeka, Professor of Law at Marquette University, assumed directorship of the Wisconsin Special Education Mediation System in 1998, she observed fragmentation and distrust in the system that was similar to that encountered by Larry Streeter in Idaho. Wisconsin had a high number of due process hearings with little emphasis on early resolution of conflict. In response, she established a Stakeholders' Council that included school district representatives, parents, parent advocates, and attorneys. The council defined a common vision for all parties and established an annual training program with participation by a broad spectrum of the community. Soeka believes that regular training encourages understanding of the perspectives of all participants and can alter the adversarial mindset that often epitomizes the relationship among the diverse stakeholders in the special education system. She reports a high level of satisfaction with the mediation system created by the council as well as a high rate of agreement among parents and school districts that have used it.

3. Collaborative Rule Making

The Maine Department of Education abandoned their traditional rule-making process when it revised the Maine Special Education Regulations to be consistent with IDEA '97. Rather than developing rules in isolation and subsequently soliciting input through a public process, the Department invited a group of stakeholders including parents, advocates and school personnel to take part in a collaborative rule-making process also known as negotiated rule making or regulatory negotiations that encouraged them to find common ground and jointly develop policy recommendations. The purpose of bringing stakeholders together was to improve understanding of diverse

[47] V. Miller (personal communication, October 15, 2001).

[48] Morvant, M., & Zeller, R. (1997, August). *Oregon dispute resolution study: Trends, uses and satisfaction.* Final report, Western Regional Resource Center. Eugene, OR.

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perspectives regarding the issues, to identify significant issues of concern, to generate policy options, and to develop consensus on policy recommendations for the Department to consider.

While collaborative policy development is time consuming and consensus is often hard to reach, the process has many benefits. It helps to focus resources and set priorities, foster creativity, and facilitate the regulatory process. Most importantly, the process helps to ensure that policies reflect stakeholder perspectives and thereby increase credibility, legitimacy, and trust among those affected by them. The Department used collaborative policy making to explore issues related to the role of attorneys in special education mediation, to examine whether mediation should be required at a point prior to requesting a due process hearing, and to review language related to children with emotional or behavioral disorders.[49] Collaboratively developed rules were much more easily adopted, and the rancor and divisiveness that typically occurs during adoption of controversial rules were conspicuously absent.

B. Stage II: Disagreement Strategies

The Disagreement stage is characterized by the emergence of a conflict. For example, at this stage, parents might object to a proposal by the school-based members of the IEP team. They might disagree with some aspect of an eligibility decision or a placement recommendation and might bring this to the attention of the team. A breakdown of trust and communication may or may not have occurred at this stage because the conflict is only emerging.

Strategies at this stage provide assistance to disputing parties as soon as a conflict seems likely or has been identified, and attempt to increase the ability of parents and school district personnel to work together. Disagreement stage interventions hold particular promise because they occur early in the evaluation of conflict when there may be more flexibility and openness to collaborative problem solving.[50]

1. Parent-to-Parent Assistance

Parents are a valuable source of assistance as liaisons to other parents. Parent liaisons have been hired in many districts, often through the Parent Training and Information Centers, to provide guidance, support, and information to families of children with special needs. These liaisons serve as parent educators who help other parents prepare for IEP meetings and mediation, engage in self-advocacy, and understand the scope of the special education entitlement. These activities focus on the building of relationships between parents and school staff.

Typical of the services provided by parent liaisons are those described by Patricia Bober of the Wisconsin Department of Public Instruction. "In general, he or she assists parents who are concerned about the design and delivery of special education services for their children. That may take the form of assisting the parent in the IEP meeting or mentoring parents before and after IEP meetings. It may be more general as well, providing

[49] LaChance, J., Nunery, A., & Opuda, M. (2000, December). *A seat at the table: Involving parents, advocates and school personnel through collaborative rule making.* Panel presentation at CADRE's National Symposium on Dispute Resolution in Special Education, Washington, D.C.

[50] See, for example, Verdonk, T. (1999-2000, Fall/Winter). *Why mediation doesn't always work.* Mediation report, Michigan Special Education Mediation Program. State Court Administrative Office.

training, networking opportunities, or written information. There are two important principles in our project, (a) to build the capacity of individual school districts to involve and communicate with parents, and (b) to promote a nonadversarial approach to conflict resolution that builds trust between school staff and parents." [51]

Another example of parent-to-parent assistance, involving the Local Capacity Building (LCB) grants currently funded through the Oregon Department of Education, focuses on training a group of resource parents in a tri-county area. A clearinghouse has been established for parents with shared interests in special education issues. Concerned parents can call a central number and access a project coordinator who screens their concerns. The parent is then assigned to a resource parent who assists them in determining the most appropriate recourse for their particular dispute.[52]

The Sonoma County SELPA (Special Education Local Planning Area) in California has trained parents to serve in the role of ADR Resource Parent or IEP Support Parent. The ADR Resource Parent is one who has been trained in special education law and programs and has learned the skills needed to help resolve conflicts between families and schools. This parent can help family members understand the law and the special education system as well as assist them in identifying and clarifying concerns and interests. The IEP Support Parent accompanies parents to IEP meetings, and, while not their advocate, he or she can help parents understand what is happening during the meeting and educate them with regard to their rights and responsibilities.[53]

2. Case Manager

Case managers generally assist in remedying miscommunication and misinterpretation of the law. Pennsylvania has a case management system in which a parent is assigned a case manager as soon as contact is made with the state mediation office. The case manager assists in reviewing options for resolving the dispute.[54]

Since 1997, schools and other community funders have supported a case coordinator function in Lane County, Oregon at Direction Service. The job of case coordinators is to facilitate family-centered interagency collaboration and to support families and schools in preventing and resolving disagreements. Central to the work of Direction Service is the preservation of positive working relationships between families and schools and the engagement of nonschool community resources that can contribute to positive educational outcomes for children and youth.

Similarly, Patricia McGinnis, coordinator from the Minnesota Office of Alternative Dispute Resolution who manages their special education mediation program, helps parents and school personnel clarify the issues in dispute, offers technical assistance in choosing the appropriate process, and prepares the parties for successful participation.[55]

[51] P. Bober (personal communication, January 15, 2001).

[52] S. Harris (personal communication, November 30, 2000).

[53] Sonoma County SELPA. (2000). *Alternative dispute resolution*. [Brochure]. Santa Rosa, CA.

[54] D'Alo, G. (2000, November). *Are we in the zone yet? Defining quality in special education*. Presentation at CADRE's National Symposium on Dispute Resolution in Special Education, Washington, D.C.

[55] P. McGinnis (personal communication, November 1, 2001).

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3. Telephone Intermediary

Intake specialists in most mediation offices simply record the information given by parents, note the presenting grievance, and then set up a mediation session for the disputing parties. Several states and districts, however, have developed strategies to intervene with parents by telephone as soon as a conflict is identified. The telephone inquiry by the parent is viewed as an opportunity for the mediation office to help clarify the problem and to determine if there is an informal way of resolving the issue.

Several state mediation coordinators have reported that parents sometimes call their offices out of confusion over the process of securing services in their local school systems. They may have had an unpleasant IEP meeting and have decided to seek mediation without learning if there are other less formal ways of addressing the dispute. Frequently, these parents have not brought their concerns to the local director of special education. In many states, including Maryland, Texas, and Pennsylvania, the mediation office simply connects the parent with the special education director, and the director is then able to intervene and successfully resolve the issue. Facilitating discussions between parents and local special education administrators, regular school staff, and service providers can be an important function of the state mediation office.

Some mediation offices employ parents in this first-line role so that parents with grievances are immediately able to speak with an individual in the mediation office who is a parent of a child with a disability. Maria Landazuri, who formerly worked for her state's 619 program, writes: "New Mexico has a parent contact in the special education office . . .. Our contact receives all the parent calls and then intervenes or assists them with complaints. We've had this parent position for several years, and for the past 1-1/2 years we've had one person doing this job. We have had fewer formal complaints since he's been in that position." [56] Colorado[57] and Florida[58] have similar systems. Maryland has a veteran staff person in its special education office who is available to intervene with families by telephone and to bring their concerns to the attention of school districts.[59]

A school district in Kansas has established a parent hotline specifically for families of children with special needs. The individual who coordinates this service can assist parents and act as an ombudsperson or liaison between the parent and the school district.[60] Gittler and Hurth report that parent liaisons at the state education agencies in both Massachusetts and Texas have had considerable success in doing telephone fact finding, with resolution of problems reported in 90% of the cases.[61]

C. Stage III: Conflict Strategies

Stage III strategies involve using third parties to resolve a fully evolved conflict. Generally by this stage parents and school representatives have held an IEP meeting and have articulated an identifiable disagreement.

[56] M. Landazuri (personal communication, February 11, 2001).

[57] J. Amundson (personal communication, February 11, 2001).

[58] Gittler, J., & Hurth, J. (2000, November) Discussion at CADRE's National Symposium on Dispute Resolution in Special Education, Washington, D.C.

[59] M. Shulbank (personal communication, October 2000).

[60] R. Whalen (personal communication, January 2001).

[61] Gittler, J., & Hurth, J. (2000, November). *Early intervention dispute resolution.* Presentation at CADRE's National Symposium on Dispute Resolution in Special Education, Washington, D.C.

Parents are typically in the process of seeking outside intervention, either through mediation under IDEA or due process hearings. Consequently, Stage III strategies are most effective when they are quickly utilized.

1. Facilitation

Several states and school districts routinely use IEP facilitators when there is a sense from any of the participants that the issues at the IEP meeting are creating an acrimonious climate. The role of the facilitator, unlike that of an advocate, is to focus the dynamics of the meeting to ensure that the participants interact respectfully, that the perspectives of all participants are heard, and that the participants focus on future action.

Each participant in an IEP meeting contributes a unique and important perspective to the discussion. In cases where individuals differ strongly in their views, it is difficult, if not impossible, for any IEP team member to advocate his or her perspective and simultaneously facilitate the ongoing discussions of a fractious team. The presence of an outside facilitator relieves meeting participants from trying to play both roles. Veteran mediator and attorney Lyn Beekman writes, "Sometimes the whole environment for an IEP meeting can be changed merely by appointing or mutually selecting a neutral facilitator to run the meeting." [62]

The Michigan Special Education Mediation Program offers interested parties the option of requesting a trained mediator to serve as a facilitator during an IEP meeting. Tonia Brown, Program Coordinator for the mediation center based in Oakland, Michigan, writes, "IEP facilitators are third-party neutrals who also serve as special education mediators. IEP facilitators primarily focus on communication between parties and staying on the issues at hand during the IEP meeting. The agenda for the meeting, however, is set by the parents and schools." [63]

Other districts use facilitators outside of the IEP meeting. For example, Iowa employs a system of Resolution Facilitators. According to Dr. Martin Ikeda, a Resolution Facilitator may be either an individual from within the school district who is considered neutral to the conflict or an individual selected from outside the district in which the conflict has occurred.[64] This option may prove financially attractive to states and districts because Resolution Facilitators typically provide services at no cost.

Lyn Beekman's strategies in his work in Michigan include the use of a "relations consultant." This consultant is often a mental health professional, who discusses how the relationship among the parties has broken down and suggests ways of improving communication.

2. Mediation Hybrid Models

Many states provide mediation without a request for a due process hearing. In December, 2001 Valerie Miller, Dispute Resolution Specialist for the State of Oregon, surveyed State Mediation Coordinators regarding the availability of state-funded mediation prior to a hearing request. Of the 21 states that responded, 13 states indicated that they provide mediation whenever it is requested. Beyond the classic mediation model, several strategies have emerged from states and districts that are flexible adaptations of the typical approach.

[62] Beekman, L. (2000, November). *Mediation plus options to resolve the "real" problems underlying disputes.* Hand-out at CADRE's National Symposium on Dispute Resolution in Special Education, Washington, D.C.

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[63] Brown, T. (2000, Spring/Summer). The key to a successful IEP meeting may be a facilitator. *Special Education Mediation Reporter.*

[64] M. Ikeda, Coordinator of Research and Special Projects in Heartland AEA 11 of Johnston, Iowa (personal communication, January 10, 2001).

The preappeal mediation conference is much like mediation under IDEA, but it occurs in advance of the filing for a due process hearing. By avoiding the hardening of positions that can occur when mediation is scheduled close to a hearing date, the preappeal mediation conference provides the parties more flexibility. Attorneys often favor this approach because the parties feel they have more time to negotiate.

While a number of states provide some form of early mediation "on demand," Iowa pioneered the success of the preappeal conference. Iowa attorney Curt Systma, who represents parents in approximately 70% of the preappeal cases in Iowa, praises this process for resolving serious conflicts between parents and the school district when lower level advocacy has failed.[65] There was a remarkable 91.5% success rate for special education preappeal conferences in Iowa between July 1, 1999 and June 30, 2000.[66]

Other notable examples include:

- **Solutions teams:** One of the California SELPAs uses a co-mediation model composed of a parent of a child with disabilities and an educator or administrator. This strategy, which they call a Solutions Team, is designed to build a safe, collaborative working relationship by fostering communication between families and school personnel. It models effective interaction by having a parent and district staff person collaborate to provide facilitation.

- **Shuttle mediation:** Some of the SELPAs in California use Shuttle Mediation, in which a mediator goes back and forth between the parties to work out the details of agreements. This method can be helpful in dealing with the particular issues in a case, but may not enhance communication and positive relationships among stakeholders because the participants are not present in the same room.[67]

3. Ombudsperson

An ombudsperson in special education is generally a third party who investigates complaints, proposes solutions, and negotiates with all parties. Unlike a facilitator or a mediator, who typically emphasizes the importance of having the parties come to their own agreement, an ombudsperson may take a more active role in fostering resolution of the conflict. Howard Gadlin writes that the essence of this role is the power to investigate, make judgments, issue reports, and make recommendations.[68] Ombudspeople may be staff members of school systems or may be appointed for a particular case with agreement from all parties. Brice Palmer explains the ombudsperson role in Vermont this way:

> Our hope is to improve the delivery of needed services to children in the district by improving the way in which disputes are evaluated and handled prior to things blowing up . . .. In our instance the ombudsman will have access to all files, have authority to interview any school employee, evaluator, parent, etc. and perform an independent impartial investigation relating to any 504 [civil rights] or IDEA dispute. The ombudsperson then will write a report and recommendation. Because we are walking on new ground the recommendations are nonbinding. This was decided jointly as a way of protecting the due process rights of both the parent(s) and the school.[69]

[65] C. Systma. (personal communication, January 5, 2001).

[66] Hansen, L. (2000, June). *Iowa's special education preappeal conference for conflict resolution July 1, 1999-June 30, 2000.* University of Iowa, Division of Policy, Planning and Leadership Studies.

[67] Atchison, K., Morton, B., Neustadt, S., Sorenson, F., & Welton, J. (2000, November). *The evolving California model: Rational SEA policy, effective local implementation and sound accountability.* Presentation at CADRE's National Symposium on Dispute Resolution in Special Education, Washington, D.C.

[68] Gadlin, H. (2000, January). The ombudsman: What's in a name? *Negotiation Journal,* 16 (1), 37-48.

[69] B. Palmer (personal communication, August 15, 2000).

4. Third-Party Opinion/Consultation

In this model, all parties to a dispute work with outside legal and/or special education experts to learn more about the merits of their position in the conflict. The experts provide the parties with information on the issues under consideration. All of the parties study this information with the goal of deciding how they might fare in a hearing. Each of the parties can then decide whether to proceed with the hearing. This method of conflict resolution includes early neutral evaluation and advisory opinions.

Early neutral evaluation offers a method for determining whether parties should proceed to a due process hearing or use another form of dispute resolution. As used in New Hampshire, the evaluation is defined as a "neutral conference [that] is a voluntary, confidential process presided over by a trained professional who listens to both sides of a dispute and makes a recommendation which both sides may either adopt or refuse . . .. The neutral evaluator's recommendation should guide parties in determining whether to proceed with a hearing. It is non-binding unless both parties agree to the recommendation." [70]

In the New Hampshire process, a state-selected neutral evaluator conducts a conference on a mutually agreed upon date. Five days prior to the conference, the parties submit and exchange a four-page summary of the significant aspects of the case. The parties who plan to attend the conference must have settlement authority. At the conference, the neutral evaluator may ask the parties questions and allows each party thirty minutes to add to their written summaries with a brief oral statement. At the end of the oral arguments, the neutral evaluator issues an oral opinion to the parties. The opinion contains a suggested settlement or disposition along with the basis for the conclusions. If the parties agree with the conclusions, then the neutral's opinion is incorporated into a written, binding agreement that is signed by each party. If the neutral conference does not result in agreement, then the neutral evaluator will document only the date and the participants at the meeting. The conference is limited to two hours.[71]

Lyn Beekman's strategies include the appointment of a neutral third-party as a "Mutually Agreed Upon Authority," an individual to whom the parties give the authority to make interim decisions when communication among the disputing individuals makes cooperative decision making difficult. The individual is empowered to review any aspects of the case, talk with all individuals involved, and decide an appropriate course of action for the child after an informal information gathering process.

Connecticut offers an advisory opinion process that can be accessed by individuals who have already filed for a due process hearing. This strategy, which originated in Massachusetts, enables parties to opt for a neutral opinion and postpone the formal hearing. A hearing officer conducts a scaled-down version of a hearing and then renders an opinion. The parties cannot record or transcribe the proceedings. Participants may include the parent, special education director, and attorney or advocate for each party, and three additional people. The party requesting a change in special education or related services is allocated 45 minutes to present its case with no more than two witnesses. The responding party is allocated 45 minutes to present its case with no more than two witnesses. No cross-examination or objections are permitted. The requesting party has 15 minutes to ask questions of any witness or elaborate on any part of the case, followed by the responding party doing the same.

[70] New Hampshire Department of Education. (n.d.). Another alternative to a due process hearing. http://www.ed.state.nh.us/Hearings/neutral1.htm

[71] New Hampshire Education Regulations, Special Education Alternative Dispute Resolutions, Neutral Conference 186-C.23-b.

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The hearing officer renders an advisory opinion within 30 minutes of the close of presentations and may facilitate settlement discussions. The opinion is not binding, and either of the parties can proceed to the formal hearing.

Iowa's Department of Education is currently trying an arbitration/mediation hybrid process on a pilot basis. This pilot project sends a mediator to the due process hearing to offer one more opportunity for mediation, even after a hearing begins. If the parents or schools decide that they would like to try mediation, the hearing is stopped with the hearing officer removing himself. The mediator comes in and attempts to mediate an agreement. If successful, a dismissal of the hearing is requested.[72]

Minnesota is trying out a tentative program for special education arbitration. The Division of Accountability and Compliance located in their Department of Children, Families and Learning will provide an arbitrator for free if certain provisions are included in the parties' agreement to arbitrate. Some of the provisions include that the decision must be binding, the arbitrator will come from a state list, and the decision will be issued within 20 days of the agreement to arbitrate.[73]

CONCLUSION

While providers and families may often have disagreements concerning the design and delivery of special education services, strategies for prevention and early resolution of disputes promise to mitigate the fallout of special education conflict. Early dispute resolution strategies not only help stakeholders avoid conflicts arising from mistrust and miscommunication, but also help resolve substantive disputes so that expensive and adversarial due process hearings or litigation can often be averted.

The likelihood of amicable resolution increases when states and school districts match the most appropriate conflict resolution strategy to the particular types of dispute they face. These early strategies for conflict management afford opportunities for all parties to engage in respectful dialogue ensuring that the perspective of each stakeholder is heard and that appropriate services are provided to children with special needs.

[72] D. Wilson (personal communication, November 17, 2001).

[73] P. McGinnis (personal communication, November 1, 2001), and J. Mortenson (personal communication, November 20, 2001).

Appendix A

Regulatory Provision of Mediation Under IDEA '97
(34CFR 300.506) March 12, 1999

Main Regulatory Provision
for Mediation Under IDEA 97

Sec. 300.506 Mediation.

(a) General. Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in Sec. 300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under Secs. 300.507 or 300.520-300.528.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process— (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing under Sec. 300.507, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2)(i) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part—(i) May not be an employee of- (A) Any LEA or any State agency described under Sec. 300.194; or (B) An SEA that is providing direct services to a child who is the subject of the mediation process; and (ii) Must not have a personal or professional conflict of interest.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Sec. 300.194 solely because he or she is paid by the agency to serve as a mediator.

(d) Meeting to encourage mediation.

(1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity and (ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A public agency may not deny or delay a parent's right to a due process hearing under Sec. 300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1415(e))

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Appendix B

MEDIATION	HEARING
Purpose: The mediator uses an informal process to assist parties through their negotiations and planning to an outcome they themselves determine.	***Purpose:*** The hearing officer uses a formal process requiring presentation of evidence, sworn testimony, and cross-examination to determine facts, which help him/her to form a conclusion. The officer then makes a decision for the parties.
History: The mediator encourages parties to focus on the child's current skills and needs as a foundation for exploring the possibility of an agreement.	***History:*** The hearing officer is likely to hear and consider more detailed history, especially with regard to procedural violations or failure of school staff or parent to fulfill their obligations in the past.
Intervention style: The mediator may intervene to guide parties in discussion, to clarify what is intended, to elicit parties' best thinking, to maintain a civil process, to reframe important questions in a way that engages people.	***Intervention style:*** The hearing officer must maintain control of the hearing environment while ensuring that parties are permitted to present their cases and must have on the record the evidence necessary to decide the case.
Preparation: Parties need to think about the student's current performance, progress and any need for special support or instruction. The requirement for preparation is not exhaustive and is oriented toward the present.	***Preparation:*** The requirements for preparation are exhaustive. Representatives for parent and school must be able to marshal all evidence, prepare witnesses to testify, fully inform the hearing officer and create a record for appeal, if necessary.
Resources: The resources required for this effort are the 2 to 3 hours spent by the parties and mediator to identify and work on the issues they wish to resolve.	***Resources:*** The resources required for a hearing include the costs of representation, the time and cost of preparation and the several days parties typically spend at the hearing.
Parties' relationship: The mediation is an assisted negotiation. The mediator will try to maintain or restore a working relationship between the parent(s) and school staff in order to help them to complete their negotiations and planning process successfully.	***Parties' relationship:*** The hearing officer will try to minimize the acrimony and tension at the hearing, but much of it is inherent in an adversarial proceeding. Parties cross-examine each other and challenge each other's credibility and competence.
Private discussions: The mediator will meet with parties together and in separate private discussions in which parties may make statements that are later held confidential.	***Private discussions:*** No ex parte or private discussions may occur between parties and the hearing officer. The decision is based on the record of documents and testimony.
Confidentiality: The comments and offers made during mediation sessions are confidential and cannot be used in another forum.	***Confidentiality:*** The record of the hearing is confidential but will be used if the case is appealed to a court of law.
Sources of information: The mediator relies on the verbal statements of the parties as the primary source to inform each other and him/herself about the child's program, their concerns and aspirations, and the goals, interests and choices before them.	***Sources of information:*** The hearing officer relies on documentary evidence and testimony, and assesses the credibility of witnesses and expert opinions, especially the diagnostic, evaluative and testing qualifications of professionals involved in evaluating a student and delivering services.
Skills of the mediator: The mediator prepares people for the mediation and guides them through it in ways that contribute to a successful negotiation, employing interpersonal, facilitative and cognitive skills. The mediator must be knowledgeable about legal standards in special education issues.	***Skills of the hearing officer:*** The hearing officer's role is to conduct a fair and orderly hearing, to inform him/herself, to rule on evidence, and to develop the record. Outside the hearing, the officer weighs evidence and writes a logical, persuasive, and legally defensible decision. Knowledge of the law is essential.

Prepared by Art Stewart

Appendix C

Advantages and Limitations of the Use of Early Informal Dispute Resolution Strategies

Advantages:

Rapid & Economical Resolutions

Early dispute resolution strategies often provide a more timely way of resolving disputes and can be employed quickly. Early dispute resolution strategies are generally less expensive when contrasted to the expense of a due process hearing or litigation. When families and school personnel want to focus on educational results for children, these early dispute resolution strategies may be desirable as a means of producing more rapid results.

Relationship Building

Special education disputes occur in the context of relationships that will continue into the future. A collaborative resolution that addresses the interests of families and schools can often preserve a working relationship in ways that would not be possible in an adversarial decision making procedure. In the early stages of a dispute, third-party decision-makers are not necessary. Through early dispute resolution strategies, school district staff and parents learn to engage in a process of interaction that fosters better understanding. If a later dispute results, families and schools are more likely to utilize a cooperative forum for problem solving to resolve their differences rather than pursue an adversarial approach.

Personal Empowerment

Through training and practice, school staff and parents acquire communication skills that can be used in the IEP process and can also be used in other settings. People who negotiate their own resolution often feel more empowered than those who use third-party decision makers, such as hearing officers or judges, to make decisions for them. Early dispute resolution strategies can provide a forum for learning about and exercising personal power and influence.

Customized & Satisfying Resolutions

Resolutions reached through early dispute resolution strategies can address both legal and nonlegal issues. Families and schools can tailor a resolution to their particular situation. Participants who negotiate their own resolution have more control over the outcome of the dispute and are generally more satisfied with a solution that has been mutually agreed upon, as opposed to outcomes that are imposed by a third-party decision maker.

Effective Resolutions & Durable Agreements

Families and schools who resolve their differences through early dispute resolution strategies are able to attend to the fine details of implementation. Negotiated or mediated agreements can include specially tailored procedures for how the decisions will be carried out. The durability of agreements is enhanced when families and schools take mutual responsibility for developing solutions.

Cultural Sensitivity & Process Flexibility

Early dispute resolution strategies can be devised to maximize the likelihood that cultural issues do not become a barrier to the resolution of disputes. Early dispute resolution strategies are more flexible in their design and implementation than processes found under the procedural safeguards section of IDEA '97.

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Limitations:

Need for Legal Interpretation

Some aspects of disagreements may require policy or legal interpretation. Informal conflict resolution and even mediation under IDEA '97 may obscure the need for resolution of disputes through the judicial system. There are times when it is important for cases to be heard by the courts in order to provide guidance in areas of the law that are vague, unclear, or untried.

Power Imbalances

With informal conflict resolution strategies there can be a power imbalance if participants are not able to adequately represent themselves. Despite an emphasis on building positive relationships between parents and school personnel, family members may feel an implied pressure to acquiesce to the expectations of individuals who are perceived as experts in education.

Third-Party Competence

In situations in which IEP facilitators or outside third parties are utilized to assist parties in devising solutions to disputes, there may be no assurance that the facilitator has suitable training. The few states that are piloting projects with ombudspeople or parent liaisons require that these individuals meet the standards for mediators under IDEA '97.[74]

Implementation

When school personnel and parents devise their own agreements, there may not be sufficient attention given to the recording and formalization of the agreements. Experienced mediators often recommend that parties convene an IEP meeting to incorporate agreed upon changes into the child's educational program or in some way ensure implementation.

[74] Beyer, J. (1997, Winter). Practicing law at the margins: Surveying ethics rules for legal assistants and lawyers who mediate. *The Georgetown Journal of Legal Ethics*, 11(2), 411-420.

Appendix D

Examples of Early Dispute Resolution Strategies

(For more information about particular programs, please contact the CADRE office.)

Rather than be a complete compendium, this table is intended to illustrate the range of innovative early dispute resolution strategies being utilized by state and local education agencies to resolve special education and early intervention conflicts. While not listed here, many state and local education agencies also offer mediation prior to filing for a due process hearing under IDEA '97. *Note: While states are listed as the location, many of these processes are not statewide and are being implemented at the local level.*

Name of Strategy	Brief Description	Location
Stakeholder Training	Training is provided to parents, special educators and regular educators in an effort to enhance their abilities to avoid and successfully resolve future conflicts. Training ranges from 1-3 days with topics that may include collaborative decision making, negotiation, mediation, multi-party dispute resolution and cultural diversity.	Kentucky Minnesota Mississippi Washington
Stakeholder Training	The 15 area education agencies (AEAs) provide a training program on skills to effectively resolve differences between parents and educators. These workshops are conducted by the Iowa Peace Institute and are funded by the Iowa Department of Education. The state education agency (SEA) funds training opportunities in the jurisdiction of each AEA for introductory and advanced mediation.	Iowa
Stakeholder Training	The SEA provides a 40-hour training in interest-based negotiation to staff from key advocacy organizations.	Idaho
Stakeholder Training	The SEA conducts statewide and regional training and dissemination of information, including the use of a multimedia approach.	Virginia
Stakeholder Training	The SEA provides parents, teachers, and school administrators two six-hour institutes at the annual exceptional children conference. Sponsorships are offered to parents so that they can afford to attend. Training includes conflict resolution skills, communication techniques, and a live mock mediation. Five regional activities are also presented to promote educational mediation and the effective use of conflict resolution.	Kentucky

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Name of Strategy	Brief Description	Location
Stakeholder Training	Portland Public Schools, under a subcontract with the Oregon SEA, designed guidelines for conflict management in special education and provided training to staff and parents in pilot schools. The guidelines include information on understanding conflict, managing conflict in meetings, active listening, interest-based problem solving, meeting-closing strategies, and post-meeting considerations.	Portland, Oregon
Stakeholder Training	Hood River Schools, under a subcontract with the Oregon SEA, developed a manual that is designed as an educational tool for understanding and resolving conflict. It applies dispute resolution concepts to special education situations. Written in an easy-to-understand, illustrated, and jargon-free format, it is designed both for stand-alone reading and for use in workshops.	Hood River, Oregon
Early Settlement Mediation Project (Participant Training)	All sectors of the special education community are trained in mediation including parents, parent groups, school personnel, advocates, and SEA officials.	Oklahoma
Stakeholders' Council	The Stakeholders' Council defined a common vision for the design, management, and evaluation of their state's conflict management system. Participants, who include school district representatives, parents, parent advocates, and attorneys, attend annual training sessions and other annual events.	Wisconsin
Collaborative Rule Making	The SEA invites key stakeholders including parents, advocates and school personnel to a collaborative rule-making process that encourages them to find common ground and jointly develop policy recommendations.	Maine
Parent-to-Parent Assistance	Specially trained parents assist and mentor parents before, during, and after IEP meetings. Parents may be provided with training, networking opportunities, and written information.	Wisconsin
Parent-to-Parent Clearinghouse	Parents can call a central number and access a project coordinator who screens their concerns. Parents are assigned to a resource parent who assists them in determining the most appropriate recourse for their particular dispute.	Oregon
ADR Resource Parent	ADR Resource Parents are trained to help family members understand special education law and clarify their interests and concerns.	California
IEP Support Parent	IEP Support Parents attend IEP meetings and help parents understand the process as well as their rights and responsibilities.	California

Name of Strategy	Brief Description	Location
Case Manager	A parent is assigned a case manager as soon as contact is made with the state mediation office. Case managers facilitate communication and assist with interpretation of the law. The case manager helps to identify options for resolving the dispute.	Pennsylvania
Case Coordinator	Case Coordinators at Direction Service, a multi-program family support agency, facilitate family-school partnerships and support families and schools to prevent and resolve disagreements.	Lane County, Oregon
Case Coordinator	A coordinator from the Bureau of Mediation Services helps parents and school staff clarify the issues in dispute, offers technical assistance in choosing the appropriate process, and prepares the parties for successful participation.	Minnesota
Telephone Intermediary or Hotline	A telephone inquiry is viewed as an opportunity for the mediation office to help clarify the problem and to determine if there is an informal way of resolving the issue.	Alabama, Colorado Florida, Iowa Kansas, Massachusetts New Mexico, Texas
IEP Facilitation	IEP facilitators primarily help with communication between the parties and focus on key issues. The parents and school personnel set the agenda for the meeting.	Michigan Minnesota
Resolution Facilitators	An individual who is considered neutral to the situation facilitates resolution outside of the IEP meeting.	Iowa
Solutions Teams	This mediation model utilizes a parent of a child with disabilities working in partnership with an educator or administrator, and sometimes a community mediator. This strategy is designed to build a safe, collaborative working relationship through fostering communication between families and school personnel. It models effective interaction between parents and educators.	California
Shuttle Mediation	This process involves the mediator going back and forth between the participants to work out the details of an agreement. The process has the capacity to function over several days and accommodate individuals separated by geographic distance.	California
Pre-Appeal Conference	This approach is similar to mediation under IDEA but occurs in advance of the filing for a due process hearing allowing more flexibility.	Iowa

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Name of Strategy	Brief Description	Location
Ombudsperson	This process uses a neutral third-party who investigates complaints, proposes solutions, and negotiates with all parties. Unlike a facilitator or a mediator who typically emphasizes the importance of having the parties come to their own agreement, an ombudsperson may take a more active role in fostering resolution of conflict.	Vermont
SEA Implementation Monitor	The SEA Complaints Manager attends all mediations bringing legal expertise to the mediation and monitoring all agreements that are reached to ensure implementation.	Utah
Early Neutral Evaluation	Early neutral evaluation is a voluntary, confidential process presided over by a trained professional who listens to both sides of a dispute and makes a recommendation that both sides may either adopt or reject. The neutral evaluator's recommendation guides parties in determining whether to proceed with a hearing. It is non-binding unless both parties agree to the recommendation.	New Hampshire
Mutually Agreed Upon Authority	In this model, the parties give an individual the authority to make interim decisions when communication among the disputing individuals makes cooperative decision-making difficult. The individual is empowered to review any aspects of the case, talk with all individuals involved, and decide an appropriate course of action for the child.	Michigan
Advisory Opinion	This process used for Part B disputes, enables parties to opt for a neutral opinion and postpone the formal hearing. A hearings officer, who conducts a scaled-down version of a hearing, renders the opinion. The opinion is not binding, and either of the parties can proceed to the formal hearing.	Connecticut
Arbitration-Mediation	This pilot project sends a mediator to the due process hearing. It offers one more opportunity for mediation, even after a hearing begins. If the parents or schools decide that they would like to try mediation, the hearing is stopped with the hearing officer removing himself. The mediator comes in and attempts to mediate an agreement. If successful, a dismissal of the hearing is requested.	Iowa
Arbitration	The state provides an arbitrator for free if certain provisions are included in the parties' agreement to arbitrate. Some of the provisions include: decision must be binding, arbitrator will come from a state list, and decision is issued within 20 days of agreement to arbitrate.	Minnesota

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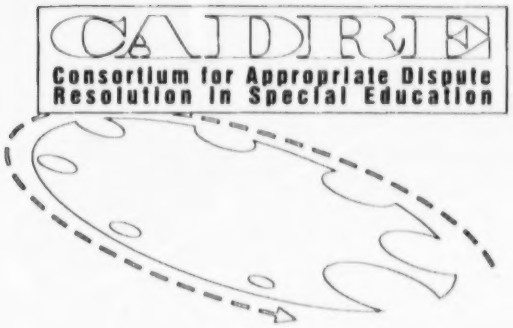

CADRE is funded by the United States Department of Education as the National Center on Dispute Resolution and Special Education.

CADRE leverages the experience of individual and organizational leaders to provide efficient, effective and high quality technical assistance. These affiliations include a unique blend of parents and professionals, expertise in technical assistance and extensive knowledge of dispute resolution practices.

CADRE builds its activities, products and services around the needs of state and local education and early intervention systems, parent centers, families and educators.

CADRE uses advanced communications technology and traditional strategies to:

- ☐ *Provide technical assistance on implementation of the mediation requirements under IDEA '97.*
- ☐ *Motivate parents, schools, and service providers to use appropriate dispute resolution processes.*
- ☐ *Stimulate and support efforts to resolve disputes early and effectively.*

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